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DYNAMIC PLANTATIONS BHD

v.

PENTADBIR TANAH DAERAH SEGAMAT

B

HIGH COURT MALAYA, MUAR
AHMADI ASNAWI JC
[ORIGINATING SUMMONS NO: 24(L)-412-2005]
4 FEBRUARY 2008

C ***LAND LAW:*** *Acquisition of land - Objection to award - Whether filed within time stipulated - Whether six-week period should run from date of Land Administrator's oral award or written award - Land Acquisition Act 1960, ss. 14, 16, 38(3)(a)*

D This was an application by the plaintiff for a declaration that all the Form Ns dated 5 August 2004 - filed by the plaintiff with the defendant on 5 August 2004 under s. 38(1) of the Land Acquisition Act 1960 ('Act') in relation to six pieces of the plaintiff's land - were filed within the stipulated period under E s. 38(3)(a) of the Act, and for an order that the court shall thereafter fix a date to hear the plaintiff's objections under s. 38(1) of the Act. In addition, both parties agreed that the decision of this case would also bind another case involving the same parties but different properties consisting altogether 73 pieces F of land. There was only one issue requiring determination: whether the six-week period to file the application to refer the plaintiff's objections under s. 38(3)(a) of the Act should run from the date of an oral award made by the defendant on 27 May 2004, or from the date a written award was served on the plaintiff G *vide* Forms G and H on 2 July 2004. The defendant contended that the date should run from 27 May 2004 as the award was made and communicated to the plaintiff on that same date, whereas the plaintiff argued that the award must be in written form in the mode and manner as provided by s. 14 of the Act and H served pursuant to s. 16 of the Act *vide* Form H. Hence, the six weeks should run from the date of service of the Forms G and H.

Held (allowing the plaintiff's claim):

(1) If the Land Administrator is minded to make an award upon I the conclusion of an enquiry in a situation as envisaged by s. 38(3)(a) of the Act, it is equally incumbent upon him to adhere to the requirements of s. 16 of the Act *ie*, he is also to prepare and serve on the person interested in such land a

notice in Form H which, *inter alia*, shall include extracts from the written award in Form G. It is not enough for him to casually issue an oral award and months later serve upon the person interested the Form G and the requisite notice under s. 16 of the Act, and then declare that the award was duly made and communicated to the person interested on the instant the oral award was made. From the facts of this case, it was clear that the defendant pronounced an oral award at the conclusion of the enquiry and deferred the written award as required by law until 2 July 2004 when he prepared the Form G and filed it. The conduct of the enquiry in this case was procedurally in error, amounting to a blatant disregard of the requirement of the law as embodied in ss. 14 and 16 of the Act. Therefore, the oral award given by the defendant upon the conclusion of the enquiry on 27 May 2004 only amounted to a proposal of the award, and not an award in the strict sense as demanded by ss. 14 and 16 of the Act. In such circumstances, the six weeks given to the plaintiff to file his objection under s. 38(3)(a) of the Act should run from the date of the service of the Form H together with an extract from the written award in the Form G upon the plaintiff, which was on 2 July 2004. Thus, the filing of the plaintiff's objection through Form N on 5 August 2004 at the Land Administrator's office was not out of time as submitted by the defendant. It was still within the six-week period as required by the law. (paras 15, 16, 17, 18 & 19)

Case(s) referred to:

Chikkamarakka v. State Of Karnataka [1994] 1 Kar LJ 561 ***(refd)***

Hamidon Ahmad v. Collector of Land Revenue, Jasin [1969] 1 LNS 51 ***(refd)***

Hanizan Che Mat & Anor v. The Collector Of Land Revenue, Kota Bharu, Kelantan [1991] 2 CLJ (Rep) 697 ***(refd)***

Madho Ram v. Collector AIR [1962] J&K 37 ***(refd)***

Padamsi Narain v. Collector of Thana AIR [1922] Bom 16 ***(refd)***

Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 2 CLJ 605 ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 8, 12, 14, 16(1), (2), 38(1), (3)(a), (4)

Land Acquisition Act 1894 [Ind], s. 11A

Other source(s) referred to:

PK Sarkar, *Law of Acquisition of Land in India, Eastern Law House, New Delhi,* p 500

A *For the plaintiff - Chua Por Ron; M/s Leng & Co*
For the defendant - Jailani Rahman, State Legal Adviser's Office

Reported by Suresh Nathan

B

JUDGMENT

Ahmadi Asnawi JC:

[1] This is an application by the plaintiff for a declaration that
C all the Form Ns dated 5 August 2004, filed by the plaintiff with the defendant on 5 August 2004 under s. 38(1) of Land Acquisition Act 1960 (hereinafter referred to as the said Act) relating to 6 pieces of plaintiff's land, were filed within the stipulated period under s. 38(3)(a) of the said Act and for an
D order that the court shall thereafter fixed a date to hear the plaintiff's objections under s. 38(1) of the said Act. In addition, both parties agreed that the decision of this case will also bind case No. 24(L)-413-2005, involving the same parties but different properties consisting altogether 73 pieces of land.

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[2] The plaintiff is the registered proprietor of 6 pieces of land situated in the state of Johor. A portion of the said lands were acquired by the State Government *vide* Warta Kerajaan No. 2597, dated 6 November 2003, under s. 8 of the said Act for the
F purpose of "Menaiktaraf Jalan Gemas ke Ayer Hitam, Mukim Gemas, Bandar Batu Anam, Buloh Kasap, Jementah, Sermin, Jabi, Sungai Segamat, Labis, Dan Chaah Segamat oleh Kementerian Kerjaraya Malaysia". An enquiry under s. 12 of the said Act was held by the Segamat Land Administrator (the defendant) on 27
G May 2004 in the presence of officers from the Valuation and Property Services Department (JPPH), representatives from Ministry of Public Works, Malaysia, assessors, and the plaintiff's representatives and counsel. It was the contention of the plaintiff that at the end of the enquiry, for each piece of land acquired,
H the Defendant orally awarded a sum of 10% over and above the JPPH's official valuation as compensation for the said lands. However the defendant avers that what was awarded was the same amount as that valued and recommended by officers of JPPH. It was not disputed by the parties that on this date the
I defendant merely made an oral award. It was also not disputed that no Form G or Form H or either both was served on the plaintiff on the said instant.

[3] On 2 July 2004, the Land Administrator made 6 written awards in Form G and served it together with Form H to the plaintiff. Being dissatisfied with the said awards, on 5 August 2004 the plaintiff filed 6 written objections in Form N requiring the Land Administrator to refer their objections to court for determination. However, acting upon the advice of the Honourable State Legal Adviser, the defendant turned down the plaintiffs requests on the grounds that:

> Pihak Penasihat Undang-undang Negeri Johor telah pun menolak permohonan tersebut dengan alasan tidak mematuhi undang-undang kerana telah difailkan di luar masa yang ditetapkan oleh subseksyen 38(3)(a) Akta Pengambilan Tanah 1960 kerana tarikh terakhir memfailkan bantahan ialah 8 Julai 2004 iaitu 42 hari selepas dari tarikh pihak pentadbiran membuat award pada 27 Mei 2004.

[4] The defendant obviously took the date the oral award was made as the date of the award. The plaintiff was instead advised to file an application for an enlargement of time to file their objections under s. 38(4) of the said Act if they are still interested to pursue the matter. Hence this declaratory proceedings before me.

[5] At the onset of the submissions it was agreed by both parties that there is only one issue for the courts determination, ie whether the six weeks period to file the application to refer the plaintiff's objections under s. 38(3)(a) of the Act should run from the date the oral award (27 May 2004) was made or from the date the written award was served on the plaintiff *vide* Form G and Form H on 2 July 2004.

[6] It was the defendant's contention that the date should run from 27 May 2004 as the award was made on that date and communicated to the plaintiff on the same instant, whereas the plaintiff argued that the award must be in written form in the mode and manner as provided by s. 14 of the Act and served pursuant to s. 16 of the same *vide* Form H. Hence the six weeks should run from the date of service of Form G and Form H.

[7] Under the Land Acquisition Act 1960, any person who is dissatisfied with the Land Administrator's award may object to the same and apply to the Land Administrator to refer the matter to the court. Section 38 of the said Act provides for the time limit within which a person interested in the land may do so. Section 38 provides:

A S. 38(1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the court.

B (2) Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in court no other grounds shall be given in argument, without leave of the court.

C (3) Every application under subsection (1) shall be made:

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under s. 14;

D (b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16 or within six months from the date of the Land Administrator's award under s. 14 whichever period shall first expire.

E (4) ...

(5) ...

[8] On a proper reading of the said section, there appears to be F two sets of time limits available for different situations. Firstly, for those who were present or represented before the Land Administrator at the time when the Land Administrator made his award under s. 14. Here he is to file his application to refer the matter to the court for determination within six weeks from the G date of Land Administrator's award. The second situation caters for those who was not present before the Land Administrator.

[9] Therefore, the question that merits discussion in this application is the true meaning of the term "Land Administrator's H award" as envisaged in the Land Acquisition Act 1960. In *Hamidon bin Ahmad v. Collector of Land Revenue, Jasin* [1969] 1 LNS 51; [1970] 1 MLJ 202, Sharma J, after referring to Indian court cases, explained the legal character and the proper meaning of the award:

I In dealing with this question it is relevant to bear in mind the legal character of the award made by the collector under s. 12. In a sense it is a decision of the collector reached by him after holding

an enquiry as prescribed by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer s. 18 gives him the statutory right of having the question determined by court, and it is the amount of compensation which the Court may determine that would bind both the owner and the collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the collector on behalf of the Government to the owner of the property for his acceptance. In *Erza v. The Secretary of State* [1903] ILR 30 Cal 36, 86 it has been held that the meaning to be attached to the word "award" under s. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded. Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the civil court. The said case was taken before the Privy Council in *Ezra v. Secretary of State for India* [1905] ILR 32 Cal 605 and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the collector or delivered by him in his office; it must involve the consideration of the question as to when it

A was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate.

B **[10]** Similarly, Abdul Hamid Said J in *Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 605 said:

> I remind myself that any objection under s. 38(1) of the LAA 1960 is a reference. This sub-section is clear when it
C says "Any objection made under s. 37 shall be made by written application in Form N to the Land Administrator requiring that he refers the matter to the court for its determination ..." To emphasise it is a reference by the Land Administrator to the court. Hence the hearing before the High Court is an original hearing.
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> The Indian High Court in *Asst Development Officer Bombay v. Tayaballi Allibhoy Bohori* AIR [1933] Bom 361 (*Bombay's* case) held that the proceedings before the acquiring officer are "... administrative rather than judicial." The said High
E Court went on to say that the "... acquiring officers award is, of course, strictly speaking not an award at all, but an offer. It is based on an inquiry and inspection ..." I would prefer to use the word enquiry even though at times enquiry and inquiry are used interchangeably – see the Concise Oxford Dictionary. If the enquiry is taken to mean
F to ask and the proceedings administrative and the hearing in the High Court is an original hearing, the award made is not a 'final judgment or decision, especially by an arbitrator or by a jury or to grant by formal process or by judicial decree' – see *Black's Law Dictionary*.

G **[11]** It is thus clear from the authorities enumerated above that the Land Administrator's award is not an award at all but an offer of compensation as determined by the Land Administrator, to the land owner. As an offer, it must be communicated to the land owner who later determines whether to accept the offer or rejects
H it. In *Hanizan Che Mat & Anor v. The Collector Of Land Revenue, Kota Bharu, Kelantan* [1991] 1 CLJ 113; [1991] 2 CLJ (Rep) 697, Idris Yusoff J explained:

> Section 12(1) says on the appointed day, the collector shall make
I full enquiry into the value of the lands to be acquired and shall also as soon as possible assess the amount of compensation in accordance with the consideration set out in First Schedule.

Subsection 3 empowers the Collector for sufficient cause to postpone the enquiry or adjourn any hearing of enquiry from time to time.

Section 14(1) deals with the obligations of the Collector at the conclusion of the enquiry. It requires the Collector to prepare a written award in Form G and such award shall be final and conclusive evidence of the area and value of the land once it is filed in the collector's office irrespective of whether the person interested has or has not appeared at the enquiry.

A look at Form G and reading it in the light of s. 14 would appear to me that Form G is only intended for use of the Collector as it is no where stated in the Act requiring it to be served on the person interested. Before Form G is registered it would appear that the Collector is at liberty for some reasons to amend the award.

Then we have s. 16 of which subsection (1) mandatorily requires the Collector on making any award under s. 14(1) to prepare and serve on each person interested a notice in Form H which notice shall include an extract from the Collectors written award in Form G. Form H is a "notice of award and offer of compensation" and **it is through Form H that the award of the Collector is communicated to the person interested.** Since it constitutes an offer obviously there ought to be an acceptance or otherwise of such offer which would normally be signified by deleting where appropriate, the already prepared reply at the foot of the form.

[12] Section 14(1) thus deals with the obligation of the Collector at the conclusion of the enquiry to prepare a written award in Form G and such award shall be final and conclusive evidence. However there is nothing under s. 14(1) to require the Land Administrator to serve a copy of Form G to the person interested upon conclusion of the enquiry. He is only required to prepare a written award under his hand in Form G and have it filed in his office. Having done so, it shall henceforth be the final and conclusive evidence of the area of any schedule land, of its value in the opinion of Land Administrator, the apportionment of the compensation awarded and whether the person interested have or have not appeared at the enquiry. The written award prepared under this section appears to be for his consumption only and for the further purpose of his office management. In this scenario would the issuance and service of Form G per se to the person interested amounted to an award by the Land Administrator as

envisaged by the Act? I opined that it does not amount so for it still remains an offer to compensate until and unless it is communicated to the person interested through the mechanism provided by the Act itself ie through the mechanics of s. 16 of the Act which provides:

16 Service of award

(1) On making any award under s. 14(1) in respect of any schedule land the Land Administrator, shall prepare and serve on each person interested in such land a notice in Form H.

(2) Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

[13] It is my view that these provisions are mandatory provision. As far as the person interested is concerned, the Land Administrator's award under s. 14(1) is complete only upon compliance of s. 16. The s. 14(1) award is only complete and good in law upon it being communicated to the person interested and it must be communicated upon service of notice in Form H and not in another manner, which shall include an extract from the written award of the Land Administrator in Form G. Section 14(1) cannot be read in isolation or independently of s. 16(1) and (2) in so far as the person interested is concerned. It is in this Form H that a formal offer to compensate the land acquired was officially communicated to the person interested (see para. 2) for the first time. It is also in this Form that for the first time the person interested was asked to acknowledge receipt of the above offer and to express himself whether to accept the offer or to accept the offer under protest or not to accept the offer at all.

[14] How on earth is the person interested to exercise his options if the award was made orally at the conclusion of the enquiry on 27 May 2004 as contended by the defendant in this case? By any account an oral award is bad in law. It has no legal basis whatsoever under the Land Acquisition Act 1960, for the Act only provides a single mode as to how an award is to be formulated and communicated ie through the mechanism of s. 14(1) and s. 16(1) and (2) of the same.

[15] If the Land Administrator is minded to make an award upon the conclusion of the enquiry in a situation as envisaged by s. 38 (3)(a) of the Act, it is equally incumbent upon him to adhere to the requirements of s. 16 of the Act, ie, he is also to prepare and serve on the person interested in such land a notice in Form H which *inter alia*, shall include extracts from the written award in Form G. It is not enough for him to casually issue an oral award and months later serve upon the person interested the Form G and the requisite notice under s. 16 and then declare that the award was duly made and communicated to the person interested on the instant the oral award was made.

[16] From the facts of this case, it is clear that the Land Administrator at the conclusion of the enquiry pronounced an oral award and deferred the written award as required by law until 2 July 2004 when he prepared Form G and filed it. In my view the conduct of the enquiry in this case was procedurally in error, amounting to a blatant disregard of the requirement of the law as embodied in s. 14 and s. 16 of the Act.

[17] Additionally, even in Indian land acquisition law, the court has interpreted that the collectors award have got to be in writting and not made orally. The mere signing of a document or oral pronouncement of an award by the Land Administrator expressing his opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award (*Padamsi Narain v. Collector of Thana* AIR [1922] Bom 16). There can be finality of the award only when it is filed in the collector's office, and becomes a part of the office record and then it shall be conclusive evidence between government and the land owner. Till the proposed award is filed and finally communicated it remains only a proposal and not an award (*Madho Ram v. Collector* AIR [1962] J&K 37). Therefore, in this case, an oral award given by the Land Administrator upon the conclusion of the enquiry on 27 May 2004 only amounted to a proposal of the award and not an award in the strict sense as demanded by s. 14 and s. 16 of the Act.

[18] For further comparison, s. 11A of India Land Acquisition Act 1894 provides a similar provision about the period within which an award shall be made by the collector. In interpreting the scope of this section, P.K Sarkar on *Law of Acquisition of Land in*

A *India, Eastern Law House, New Delhi*, at p. 500 explained the meaning of the award as pronounced in *Chikkamarakka v. State Of Karnataka* [1994] 1 Kar LJ 561 as follows:

> An award is made when the Collector draws up and signs the award. It is not relevant for the present purpose when the award is announced or communicated to the effected or interested party.

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[19] 'Draws up and signs the award' referred in the above text demonstrates that the Land Administrators award within the context of the Act is only final and conclusive after the Land Administrator has made a written award under his hand in Form G and filed it in the land office and thereafter serves the extract of Form G together with Form H to the applicants. As said earlier, the pronouncement of an oral award by the Land Administrator in this case does not amount to an award as envisaged by the Act and is bad in law. In such circumstances, the six weeks given to the applicant to file his objection under s. 38(3)(a) should run from the date of the service of Form H together with an extract from the written award in Form G, upon the applicant, that is on 2 July 2004. Therefore, the filing of applicant's objection through Form N on 5 August 2004 at the Land Administrator's office is not out of time as submitted by the defendant. It is still within the six weeks period as required by the law.

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F **[20]** For the reasons given, I allowed the plaintiff's claims and ordered the declarations as prayed for in the plaintiff's originating summon without order as to cost.

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